

From: [REDACTED]
To: [IK Project](#)
Subject: Specific protection for IK - Feedback
Date: Friday, 21 October 2022 12:03:24 PM

Hi IK Project Team,

My name is Joanne and I'm writing on behalf of [Solid Lines](#), a First Nations-led illustration agency based in Melbourne / Naarm representing First Nations artists.

We currently represent 10 artists and connect them with businesses, organisations or creative agencies that are looking for First Nations illustrators or artwork. Our aim is to generate beneficial partnerships and create culturally safe pathways for First Nations artists to work on projects within commercial advertising, art and design industries (which have typically been ignorant of or unwilling to engage with First Nations ways of working).

Our agency is committed to protecting Indigenous Knowledge / Indigenous Cultural and Intellectual Property (ICIP) and we're always looking at ways to further learn from, assist and empower our artists in this regard. As part of this work, I've had a read of your recent [Enhance-and-Enable Indigenous Knowledge Consultation Report](#) and [interim report](#), and it's great to see that IP Australia is taking steps to enact specific legislation and provide better protection for IK.

We note that you've already received consultation feedback regarding the obtaining of consent and licenses for use / registration of IK works and the need for flexibility in such processes. We'd also like to submit some additional feedback regarding trade marks, based on our experiences of trying to balance the protection of IK with the practical needs of commercial businesses:

- One of the recurring issues we've seen has related to trade mark registration requirements, specifically where a business or organisation (end client) has commissioned one of our First Nations artists to create a logo for them.
- In most cases the logo drawn by our artist will contain IK (such as motifs, symbols, stories or cultural knowledge from the artist's background and Country).
- The end client will often want / need the ability to register and protect the logo as a trade mark (such requests have come from end clients that are both Indigenous and non-Indigenous).
- It is our understanding that in order for a trade mark registration to be valid under Australian law, the trade mark applicant (i.e. the end client) must be the owner of the mark. Accordingly, the client brief will often require that ownership (i.e. copyright) in the final logo artwork be assigned from the First Nations artist to the end client.
- The idea of transferring copyright / ownership in an artwork or logo which contains IK, particularly where elements may be communally owned, is at odds with First Nations ways of working, and is a concept our artists are generally uncomfortable with. Loss of copyright and ownership in the artwork also greatly reduces the artist's ability to prevent potential misuse of the IK.
- Given the risks of proceeding with an unprotected logo or potentially invalid trade mark registration, the end client may be forced to pursue a different route. Consequently, the artist's opportunity to benefit from their IK is lost, as is the opportunity for the client to engage with First Nations artwork in a branding capacity.

Given the high number of commercial advertising and design briefs that ask for logo creation, and the understandable desire of brand owners to protect their logos via trade

mark registration, we would welcome IP Australia looking into this issue and seeing if any changes or workarounds can be enacted when it comes to end clients registering marks which contain IK. The intention would be to reduce the occurrence of circumstances where First Nations artists (as well as end clients) miss out or are discouraged from working on such commercial opportunities due to lack of accommodation for IK marks within the Australian trade mark registration process.

We're far from experts in this area and understand this will require further detailed consultation with trade mark specialists and First Nations peoples as to the most appropriate and viable way to address this. However some initial ideas might involve:

- Enacting a model / legislation which allows an exclusive license holder of a logo to register it as a trade mark (therefore allowing the original First Nations artist to retain copyright and remain the owner of the logo artwork and prevent misuse of IK via the exclusive license terms). Alternatively the requirement for the end client to own copyright in the logo / trade mark artwork could be expressly removed for marks containing IK.
- Such legislation would only apply where the logo or mark was created by a First Nations artist and contained IK. To guard against misuse or misappropriation, further documentation (as already discussed in your reports) could also be required as part of the process, such as evidence of consent from the artist, Elders or other relevant First Nations peoples, and/or a copy of agreed licence terms expressly allowing for trade mark use and registration in the name of the end client.
- We believe there may be a lack of clarity amongst the community as to what rights may actually be conferred when a trade mark is registered, which leads to apprehension and uncertainty when it comes to obtaining consent for use of logos containing IK. To this end, it may be helpful if the legislation or surrounding guidelines made it clear that registration of the logo mark in the name of the end client would only entitle it to use of that specific mark as a whole on limited goods or services as filed - and expressly state that trade mark registration does *not* transfer any rights or ownership in relation to individual or underlying IK elements (such as motifs, symbols, stories or cultural knowledge that the artist may have drawn inspiration from or included in the final design).
- The inclusion of some sort of mechanism which allows the artist to oppose the application / request cancellation of the trade mark registration should the end client come to misuse the mark.

We understand these consultations take time and change is a complex process, but hope that over time more IK protection models can be implemented and facilitate First nations artists and end clients alike to collaborate on projects in mutually beneficial and respectful ways.

Thank you for your time in considering our submissions.

Kind regards,
Joanne



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Solid Lines acknowledges Aboriginal and Torres Strait Islander People as Traditional Custodians of Country and First Nations of Australia.

We honour Elders, past and present, whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

